IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.644 OF 1993

The State of Maharashtra ...Appellant.

V/s

Mallya Ramswami Konada ...Respondent.
---
Mr. D.P. Adsule, APP for the State.

Mr. I.R. Khanwilkar, advocate appointed for respondent.
---

CORAM: V.M. KANADE, J.
DATE : 4th February, 2005

ORAL JUDGMENT:

1. Heard the learned APP for the State and the learned advocate for the respondent.

2. The State is challenging the judgment and order passed by the Metropolitan Magistrate, 6th Court, Mazgaon in Criminal Case No.117/S/88. By the said Judgment and Order dated 5/3/1993, the Metropolitan Magistrate was pleased to acquit the accused from the offences punishable under the provisions of the Prevention of Food Adulteration Act, 1954.

3. Brief facts are that on 20/8/1985, the complainant S.K. Sawant and S.G. Darme and others found that the accused was tampering with the Government Scheme milk bottles and was adultering them with water and was

resealing them again. Accordingly, 67 bottles of milk alongwith the sealing device and caps having red strips were seized. The sample of the milk from two identical bottles was taken. The accused was arrested and the milk was sent to Public Analyst who gave his report that the pasteurised standardised milk did not conform to the standards prescribed for standardised milk. A charge was framed against the accused. The accused pleaded not guilty to the charge. The defence of the accused was that he was only a servant of his master and that he was not adultering the milk as alleged by the prosecution.

4. Prosecution examined six witnesses. The statement of the accused was recorded under section 313 of the Criminal Procedure Code. In his statement, the accused stated that he was working as a servant of seth Mallaya Ramloo Bathraju who paid him Rs 175/- per month. The Trial Court, after examining the evidence adduced by the prosecution, acquitted the accused of the offence with which he was charged.

5. The learned APP appearing on behalf of the State has taken me through the judgment and order of the Trial Court as also the evidence led by the prosecution.

6. In the present case, the mandatory requirement of section 11(1)(c)(i) of the Act has not been complied with. The said provision lays down that the sample of the food article should be sent alongwith memorandum in form No. VII to the Public Analyst for test as also intimation should be given to the Local Health Authority. Though, in the present case, intimation has been given to the Public Analyst, no intimation has been given to the Local Health Authority which is the mandatory requirement of the said provision. The said mandatory requirement has not been followed. There is also a breach of the mandatory provision of section 13(2) of the Prevention of Food Adulteration Act. Under the said provision, the Local Health Authority, after it receives a report of the result of the Public Analyst, should give intimation to the accused that they are filing prosecution against him on account of the report received from the Public Analyst which shows that the food article is adulterated. Alongwith the intimation, a report of the Public Analyst also should be sent to the accused so that the accused can within 10 days from the receipt of the report get the sample analysed by the Central Food Laboratory. From the record, it can be seen that Exhibit P-9 which was a letter sent by P.W.

2 - S.K. Sawant to the Local Health Authority regarding the compliance of the provisions of section 13(2) of the Act was not received by the accused. There is no evidence brought on record to show that this intimation under section 13(2) of the Act was served on the accused. In view of this serious lapse in the prosecution case, the accused is liable to be acquitted. The view taken by the Trial Court, therefore, is confirmed. There is no reason to interfere with the judgment and order passed by the Trial Court. Appeal is dismissed.

V.M. KANADE, J.